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## **ATTACHMENTS**

Letter dated  
December 27, 1991  
from  
Russell B. Selman

A

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)



# BELL, BOYD & LLOYD

THREE FIRST NATIONAL PLAZA  
70 WEST MADISON STREET, SUITE 3200  
CHICAGO, ILLINOIS 60602-4207

312 372-1121  
FAX 312 372-2098

WASHINGTON, D.C.  
202 466-6300  
FAX 202 463-0678

DALLAS  
214 744-3800  
FAX 214 741-3633

OAK BROOK  
708 573-1999  
FAX 708 573-2563

January 29, 1991

Richard J. Kissell, Esq.  
Gardner, Carton & Douglas  
Quaker Tower  
321 North Clark Street  
Suite 3400  
Chicago, Illinois 60610-4795

D. Jeffrey Baddeley, Esq.  
Associate General Counsel  
Outboard Marine Corporation  
100 Sea-Horse Drive  
Waukegan, Illinois 60085

Re: Access to the Waukegan Coke Plant Site  
(the "Site")

Gentlemen:

This letter requests and includes a license agreement granting North Shore Gas Company ("North Shore") access to the Site currently owned by Outboard Marine Corporation ("OMC"). The license agreement seeks to ensure access to the Site to North Shore (and the United States Environmental Protection Agency ("EPA")) for the purpose of conducting and overseeing a remedial investigation and feasibility study ("RI/FS"). As you are aware, EPA named North Shore, OMC and General Motors Corporation ("GM") as potentially responsible parties under Superfund at the Site, however, North Shore alone agreed to perform EPA's requested RI/FS (Administrative Order on Consent, dated September 27, 1990, (no EPA-assigned case reference)) ("AOC").

North Shore understands that OMC may have objections to allowing North Shore access for performing RI/FS work. For example, on August 27, 1990, OMC agreed to grant North Shore unrestricted Site access during a meeting with EPA (Mr. Mulroney and Ms. Nolan), North Shore (Messrs. Kauffman, Doyle and Selman) and GM (Mr. Russell) (statements by Mr. Baddeley at Winston & Strawn's offices). Later, on September 10, 1990, Mr. Baddeley wrote me and advised that, "OMC must reevaluate its position with respect to access to the Site."

Accordingly, OMC's current view on granting North Shore access to perform RI/FS work is unknown. Following Mr. Kissell's suggestion, I prepared the attached license agreement to clarify the contractual terms for cooperation and access at the Site.

January 29, 1991  
Page 2

I will contact both of you soon to set a meeting date to further discuss access issues.

Sincerely,

A handwritten signature in dark ink, appearing to read "Russell B. Selman", with a long horizontal flourish extending to the right.

Russell B. Selman

RBS/dn  
Enclosure

cc: Sean Mulroney, Esq.  
Cindy Nolan, Esq.  
Peter Kauffman, Esq.  
Jim Russell, Esq.

## **LICENSE AGREEMENT**

**THIS LICENSE AGREEMENT** (the "Agreement" or "License"), is made this \_\_\_\_ day of \_\_\_\_, 19\_\_, by and between OUTBOARD MARINE CORPORATION ("OMC"), NORTH SHORE GAS COMPANY ("North Shore"), and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ("EPA") (collectively the "Parties");

**WITNESSETH, that:**

**WHEREAS**, OMC, North Shore and General Motors Corporation ("GMC") have been identified by EPA as potentially responsible parties ("PRPs") pursuant to the Comprehensive Environmental Response Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.* for the Waukegan Manufactured Gas and Coke Plant Site in Waukegan, Illinois, as described in Exhibit A attached hereto, (the "Site" or "Facility");

**WHEREAS**, EPA and North Shore have entered into an Administrative Order On Consent Re: Remedial Investigation and Feasibility Study For The Waukegan Manufactured Gas and Coke Plant Site, Waukegan, Illinois, U.S. EPA Docket No. \_\_\_\_ (the "Order") on August \_\_, 1990;

**WHEREAS**, the stated purpose of the Remedial Investigation and Feasibility Study ("RI/FS") is to (1) fully determine the nature and extent of the potential threat, if any, to the public health, welfare and the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants from or at the Facility by conducting a Remedial investigation ("RI"); (2) determine and evaluate alternatives for remedial action to prevent, mitigate or otherwise remedy any release or threatened release of hazardous substances, pollutants or contaminants from or at the Facility by conducting a Feasibility Study

c

*Do Not Copy*

## WINSTON & STRAWN

FREDERICK H. WINSTON (1853-1888)  
SILAS H. STRAWN (1891-1948)

35 WEST WACKER DRIVE  
CHICAGO, ILLINOIS 60601-8703

(312) 558-5600

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NEW YORK OFFICE  
175 WATER STREET  
NEW YORK, NY 10038-4881  
(212) 289-2500

WASHINGTON, D.C. OFFICE  
1400 L STREET, N.W.  
WASHINGTON, D.C. 20005-3502  
(202) 371-6700

JAMES H. RUSSELL  
(312) 558-6084

February 11, 1991

Russell Selman  
Bell, Boyd & Lloyd  
Three First National Plaza  
70 W. Madison  
Suite 3200  
Chicago, IL 60602-4207

Re: Waukegan Coke Plant Site

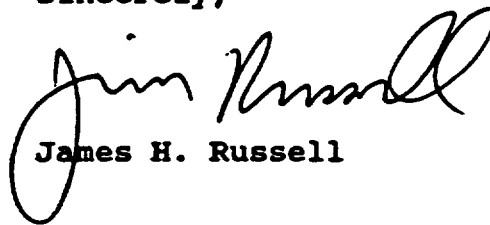
Dear Russ:

This will follow up our conference call with Don Schiemann on February 8.

As you know, Outboard Marine Corporation's (OMC) site-access restriction was the primary reason that GM did not sign the Administrative Order on Consent with North Shore.

GM will probably agree to sign the AOC if OMC will agree to allow access as called for by the License Agreement attached to your January 29, 1991 letter. If OMC accepts those terms, I would suggest that the Agreement be modified to provide access for GM.

Sincerely,



James H. Russell

JHR/gc

cc: D. Jeffrey Baddeley  
Sean Mulroney  
Cindy Nolan  
Don A. Schiemann



D

# GARDNER, CARTON & DOUGLAS

SUITE 3400-QUAKER TOWER

321 NORTH CLARK STREET

WASHINGTON, D.C.

WRITER'S DIRECT DIAL NUMBER CHICAGO, ILLINOIS 60610-4795

SOUTHFIELD, MICHIGAN

(312) 644-3000

RICHARD J. KISSEL

TELEX: 25-3628

(312) 245-8721

TELECOPIER: (312) 644-3381

February 18, 1991

Russell B. Selman  
BELL, BOYD & LLOYD  
Three First National Plaza  
70 West Madison Street  
Suite 3200  
Chicago, Illinois 60602-4207

RE: Waukegan Coke Plant Site - License Agreement

Dear Russ:

In response to your January 29, 1991 letter, OMC, as always, remains willing to provide North Shore with access to the above-referenced site for the purpose of completing the remedial investigation and feasibility study. Enclosed is an executed License Agreement setting forth the conditions upon which such access will be granted.

Once you have had a chance to review the Agreement, please contact me to discuss.

Very truly yours,



Richard J. Kissel

RJK:js

cc: D. Jeffrey Baddeley  
J. Roger Crawford

9156w

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "Agreement" or "License"), is made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_, by and between OUTBOARD MARINE CORPORATION ("OMC"), NORTH SHORE GAS COMPANY ("North Shore"), and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ("EPA") (collectively the "Parties");

WHEREAS, OMC, North Shore and General Motors Corporation ("GMC") have been identified by EPA as potentially responsible parties ("PRPs") pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601 et seq. for the Waukegan Manufactured Gas and Coke Plant Site in Waukegan, Illinois, as described in Exhibit A attached hereto, (the "Site");

WHEREAS, EPA and North Shore have entered into an Administrative Order On Consent Re: Remedial Investigation and Feasibility Study for the Site, U.S. EPA Docket No. \_\_\_\_\_ (the "Order") on August \_\_, 1990;

WHEREAS, the stated purpose of the Remedial Investigation and Feasibility Study ("RI/FS") is to (1) fully determine the nature and extent of the potential threat, if any, to the public health, welfare and the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants from or at the Site by conducting a Remedial Investigation ("RI"); (2) determine and evaluate alternatives for remedial action to prevent, mitigate or otherwise remedy

any release or threatened release of hazardous substances, pollutants or contaminants from or at the Site by conducting a Feasibility Study ("FS"); and (3) recover response and oversight costs incurred by the EPA and the Illinois Environmental Protection Agency ("IEPA") consistent with the National Contingency Plan ("NCP") 40 C.F.R. §300 et seq.

WHEREAS, EPA and North Shore have requested permission to enter upon the Site in order to prepare for and conduct the RI/FS; and

WHEREAS, OMC is willing to grant EPA and North Shore a license for the above-stated purposes:

NOW, THEREFORE, in consideration of and conditioned upon the mutual covenants, promises and agreements stated herein, the Parties agree as follows:

1. OMC ("Licensor") hereby grants to EPA, North Shore, their respective employees and agents, including contractors and subcontractors, (collectively the "Licensees") a temporary license to enter upon the Site located in Waukegan, Illinois for the purpose of preparing for and conducting any and all activities necessary to implement the RI/FS pursuant to the Order.

2. EPA and North Shore shall provide OMC with a written timetable setting forth the activities to be conducted in the preparation for and implementation of the RI/FS in sufficient

detail to allow OMC to reasonably ascertain the nature and scope of such activities contemplated at the Site. Such timetable shall be transmitted to OMC within thirty calendar days of the execution of this Agreement. No entry upon the Site will be permitted until OMC has an acceptable timetable.

3. EPA and North Shore shall indemnify, hold harmless and defend OMC, its respective employees and agents, and each of them, from and against all claims, demands, damages, losses, lawsuits, other proceedings, causes of action, liabilities, claims of lien, liens, civil or criminal penalties and charges, reasonable attorneys' fees or other costs and expenses arising out of or incident to any property damages or personal injuries, including, but not limited to, emotional or bodily injuries or death, damage to power or sewer lines, devaluation of property, or other claims for payment or liabilities which result from or are caused by the intentional, willful or negligent acts, omissions or errors of EPA and North Shore, their respective employees and agents including contractors and subcontractors, and their agents and employees, while performing activities at the Site. Notwithstanding anything to the contrary stated herein, said indemnification will not be extended to cover claims, liabilities, liens, penalties, fees, costs, or expenses resulting from the intentional act, omission or error of OMC, its agents, and employees or of third parties

with whom EPA and North Shore have no contractual obligations to indemnify on this project.

4. North Shore and any approved contractor or subcontractor, shall each, at its own cost and expense and prior to any entry upon the Site, obtain the following coverage and shall maintain such coverage during the course of the activities described in this Agreement.

| <u>Coverage</u>   | <u>Limits</u>               |
|---|-----------------------------|
| (1) Employer's Liability  | \$1,000,000 each occurrence |
| (2) General Liability<br>(personal injury)                                  | \$1,000,000 aggregate       |
| (3) General Liability<br>(bodily injury and<br>property damage combined)    | \$3,000,000 each occurrence |
| (4) Automobile Liability<br>(bodily injury and<br>property damage combined) | \$1,000,000 each occurrence |
| (5) Workmen's Compensation  | Statutory                   |

Prior to any entry upon the Site, North Shore and any approved contractor or subcontractor shall provide OMC as evidence of such insurance, a certificate of insurance in compliance with the requirements of this paragraph.

5. OMC shall permit only those employees of North Shore and any contractor or subcontractor designated by North Shore in writing to enter the Site at reasonable times to conduct the

("FS"); and (3) recover response and oversight costs incurred by the EPA and the Illinois Environmental Protection Agency ("IEPA") consistent with the National Contingency Plan ("NCP") 40 C.F.R. § 300 *et seq.*

WHEREAS, EPA and North Shore have requested permission to enter upon the Facility in order to prepare for and conduct the RI/FS;

WHEREAS, OMC, by quitclaim deed attached hereto as Exhibit B, holds exclusive title to the fee interest in the Facility; and

WHEREAS, OMC is willing to grant EPA and North Shore a license for the purposes aforesaid;

NOW, THEREFORE, in consideration of and conditioned upon the mutual covenants, promises and agreements stated herein, the Parties agree as follows:

1. OMC ("Licensor") hereby grants to EPA, North Shore, their respective employees and agents, including contractors and subcontractors, (collectively the "Licensees") a temporary license to enter upon the Facility located in Waukegan, Illinois for the purpose of preparing for and conducting the RI/FS pursuant to the Order.

2. The Licensees' activities to be conducted at the Facility include, but are not limited to: any and all activities necessary to conduct the RI/FS pursuant to the Order; inspect any and all existing records, operating logs and contracts related to the Facility; review the progress of North Shore in carrying out the terms of the Order; conduct such tests, inspections, and sampling as EPA, in consultation with the IEPA, may deem necessary; use a camera, sound or video recording, or other documentary type equipment; and verify data submitted to the EPA and IEPA by North Shore pursuant to the Order.

3. EPA and North Shore agree to provide OMC with written notice of the RI/FS timetable within thirty calendar days of the execution of this Agreement.

4. This License shall continue in effect until such time as the RI/FS is concluded to the satisfaction of EPA as provided in paragraph XXX of the Order entitled "Termination and Satisfaction." For purposes of this License, paragraph XXX of the Order is incorporated by reference into this License and attached hereto as Exhibit C.

5. The Parties reserve all rights and defenses that they may have individually or collectively pursuant to any available legal authority.

IN WITNESS WHEREOF, the parties hereto have caused this License Agreement to be executed the day and year first above written.

**OUTBOARD MARINE CORPORATION**

By: \_\_\_\_\_

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY**

By: \_\_\_\_\_

**NORTH SHORE GAS COMPANY**

By: \_\_\_\_\_

**OUTBOARD MARINE CORPORATION  
CONTACT:**

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Business Telephone Number

\_\_\_\_\_  
Emergency Telephone Number





**OUTBOARD MARINE CORPORATION**

**Direct Dial: (708) 689-5431**  
**Telecopier: (708) 689-6246**

100 Sea-Horse Drive  
Waukegan, Illinois 60085-2195  
Phone 708 689-6200  
Telex 025-3891

**September 10, 1990**

**Russell B. Selman**  
**Bell, Boyd & Lloyd**  
**Suite 3000**  
**Three First National Plaza**  
**70 West Madison Street**  
**Chicago, IL 60602**

**Re: Waukegan Coke Plant Site**

**Dear Russ:**

Last week we met with Jim Russell to explain the basis on which OMC is willing to participate in the Site study and the justification for our seeking credit for the money we have spent to date and which we are obligated to spend in the not too distant future. As you know, OMC has already spent a great deal of money on the Coke Plant Site as a direct result of contamination found on the Site. This contamination is not attributable to any activity carried on by OMC on the Site. The costs associated therewith and incurred by OMC to date are outside the scope of the Harbor Project. I understand Dick Kissel reviewed our position with you subsequent to our meeting with Jim.

Unfortunately, I have been informed by Dick that you have again categorically rejected OMC's counter-proposal regarding participation in the Waukegan Coke Plant Site. I am disappointed and somewhat surprised by your decision since OMC has generously offered to participate in the Consent Decree even though we have not contributed to the pollution on the Site. Neither Dick nor I can understand why your client or, for that matter, General Motors isn't actively soliciting OMC's participation just to benefit from our expertise and control of access to the Site.

We want to cooperate and assist you in any way we can. To date, we have provided free access to the property, to our records and to the substantial information we have developed with respect to the Site. However, in light of your continued rejection of our offer and now the threat of litigation, OMC must reevaluate its position with respect to access to the Site and any release of additional information to Barr Engineering or your client.

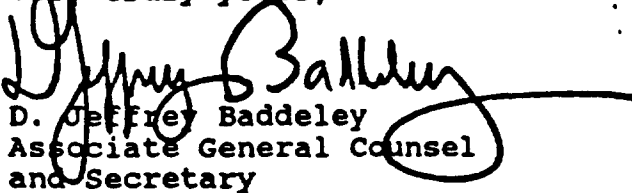
Several weeks ago, we received a request from Jim Langseth of Barr Engineering for additional information regarding construction of

September 10, 1990

New Slip 3 and related soils investigation data. OMC and Canonic Environmental have been gathering this material. However, I am instructing our Environmental Control Group and Canonic Environmental to hold all information until we can assess how this matter will proceed. I also understand Dick has asked you to prepare an initial draft of an access agreement. We look forward to hearing from you.

I had hoped to move forward on more amicable terms. If North Shore Gas reconsiders its decision, please contact me, Dick Kissel or Dale T. Vitale, who recently joined OMC as our Senior Environmental Attorney. Dale's telephone number is (708) 689-5595.

Very truly yours,

  
D. Jeffrey Baddeley  
Associate General Counsel  
and Secretary

DJB:jm

cc: J. Roger Crawford  
Glen E. Lenzi  
Dale T. Vitale  
Richard J. Kissel  
James Russell

## **LICENSE AGREEMENT**

**THIS LICENSE AGREEMENT** (the "Agreement" or "License"), is made this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between OUTBOARD MARINE CORPORATION ("OMC"), NORTH SHORE GAS COMPANY ("North Shore"), and GENERAL MOTORS CORPORATION ("GM") (collectively the "Parties");

**WHEREAS**, OMC, North Shore and GM have been identified by EPA as potentially responsible parties ("PRPs") pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.* for the Waukegan Manufactured Gas and Coke Plant Site in Waukegan, Illinois, as described in Exhibit A attached hereto, (the "Site");

**WHEREAS**, EPA and North Shore have entered into an Administrative Order On Consent Re: Remedial Investigation and Feasibility Study for the Site, U.S. EPA Docket No. VW-91-C-085 (the "Order") on August 27, 1990;

**WHEREAS**, the stated purpose of the Remedial Investigation and Feasibility Study ("RI/FS") is to (1) fully determine the nature and extent of the potential threat, if any, to the public health, welfare and the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants from or at the Site by conducting a Remedial Investigation ("RI"); (2) determine and evaluate alternatives for remedial action to prevent, mitigate or otherwise remedy any release or threatened release of hazardous substances, pollutants or contaminants from or at the Site by conducting a Feasibility Study ("FS"); and (3) recover response and oversight costs incurred by the United States Environmental Protection Agency ("EPA") and the Illinois Environmental Protection Agency ("IEPA") consistent with the National Contingency Plan ("NCP") 40 C.F.R. § 300 *et seq.*;

**WHEREAS, OMC, by quitclaim deed attached hereto as Exhibit B, holds exclusive title to the fee interest in the real property comprising the Site;**

**WHEREAS, GM and North Shore have requested permission to enter upon the Site in order to prepare for and conduct the RI/FS; and**

**WHEREAS, OMC is willing to grant GM and North Shore a license for the above-stated purposes;**

**NOW, THEREFORE, in consideration of and conditioned upon the mutual covenants, promises and agreements stated herein, the Parties agree as follows:**

**1. OMC ("Licensor") hereby grants to GM, North Shore, their respective employees and agents, including contractors and subcontractors, (collectively the "Licensees") a temporary license to enter upon the Site located in Waukegan, Illinois for the purpose of preparing for and conducting any and all activities necessary to implement the RI/FS pursuant to the Order.**

**2. Licensees shall provide Licensor with a written timetable setting forth the activities to be conducted in the preparation for and implementation of the RI/FS in sufficient detail to allow Licensor to reasonably ascertain the nature and scope of such activities contemplated at the Site. Such timetable shall be transmitted to Licensor within thirty calendar days of the execution of this Agreement. No entry upon the Site will be permitted until Licensor accepts in writing the timetable or EPA approves the timetable, whichever event is earlier in time.**

**3. Licensees shall conduct all activities set forth in this License in a manner so as to avoid interfering with Licensor's ongoing operations at the Site, including the implementation of a Consent Decree, as amended, entered into between OMC, EPA and IEPA in United States v. Outboard Marine Corp., Nos. 88 C 8571 and 88 C 8572 (N.D. Ill.) ("Consent Decree"). Licensor shall conduct all activities required by the Consent Decree in a manner so as to avoid interfering with Licensee's RI/FS activities at the Site as required by the**

activities set forth in this License. North Shore shall ensure that all employees and any contractor or subcontractor so designated by North Shore possess the proper certifications and training as required under all applicable laws and regulations to conduct such activities.

6. North Shore shall conduct all activities set forth in this License in a manner so as to avoid interfering with OMC's ongoing operations at the Site, including the implementation of a Consent Decree, as amended, entered into between OMC, EPA and IEPA in United States v. Outboard Marine Corp., Nos. 88 C 8571 and 88 C 8572 (N.D. Ill.). OMC's Project Manager shall have the authority to remove from the Site at any time and without notice any employee or agent of North Shore interfering with OMC's operations at the Site.

7. EPA, IEPA and North Shore, including any designated contractor or subcontractor, shall provide OMC with not less than twenty-four hours notice of any sampling to be conducted at the Site, giving details as to the location, time and manner of such sample-taking and shall offer OMC or its representatives the opportunity to split any samples collected.

8. EPA and North Shore shall provide OMC with all documents, including drafts, which reference, discuss, describe or otherwise concern the activities of EPA, IEPA or North Shore at the Site in the preparation for and completion of the RI/FS

pursuant to the Order, including, without limitation, all work plans, field sampling plans, quality assurance plans, health and safety plans, analytical results and data, contractor and subcontractor bids, reports, and correspondence between North Shore and any government agency.

9. This License shall continue in effect until such time as the RI/FS is concluded to the satisfaction of EPA as provided in paragraph XXX of the Order entitled "Termination and Satisfaction." By Termination and Satisfaction of this License, OMC makes no acknowledgement that the work performed by North Shore is consistent with the National Contingency Plan.

10. The Parties reserve all rights and defenses that they may have individually or collectively pursuant to any available legal authority.

11. EPA and North Shore recognize that OMC's agreement to grant this License is of value to the completion of the RI/FS pursuant to the Order.

12. Failure of EPA and North Shore to fully and promptly comply with all terms and conditions of this License shall result in immediate revocation by OMC.

IN WITNESS WHEREOF, the parties hereto have caused this License Agreement to be executed the day and year first above written.

OUTBOARD MARINE CORPORATION

By: 

D. J. Paddley  
Associate General Counsel  
Secretary

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

By: \_\_\_\_\_

NORTH SHORE GAS COMPANY

By: \_\_\_\_\_

OUTBOARD MARINE CORPORATION  
CONTACT:

J. R. Crawford  
Name (print)

(708) 689-5219  
Business Telephone Number

E